

NO. 76-103

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1976

DR. ARTURO RIOS, et al.,

Appellants,

vs.

NOLAN B. JONES, et al.,

Appellees.

Appeal from the Supreme Court of Illinois

BRIEF IN OPPOSITION TO MOTION

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To avoid repetition, we incorporate herein by reference thereto all of the material set out in the Jurisdictional Statement, with the following additions:

OPINIONS BELOW

The Opinion of the Supreme Court of Illinois, which is reproduced in Appendix C of the Jurisdictional Statement, is reported in 63 Ill. 2d 488 and in 348 N. E. 2d 825.

Addition to page 5 of Jurisdictional Statement

9a. As to the plaintiffs, all of whom acquired "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b), the Illinois statute providing for State civil service *expressly provides* that after they "have satisfactorily passed their probationary period" and "have been promoted," they "shall be continued *without further examination*". (Ill. Rev. Stat., 1975, Ch. 127, par. 63b117) (emphasis supplied.) The plaintiffs were induced by this express statutory provision to remain in the civil service of the State of Illinois and not to pursue more lucrative employment (A. 33).

Addition to footnote 3 at page 6 of Jurisdictional Statement

In *Adam v. Saenger*, 303 U. S. 59 (1938), the United States Supreme Court said, at page 63, that "this Court, in the exercise of its appellate jurisdiction to review cases coming to it from state courts, takes judicial notice of the law of the several states to the same extent that such notice is taken by the court from which the appeal is taken."

Addition to page 22 of Jurisdictional Statement

The case of *Bishop v. Wood*, is now reported in 48 L. Ed. 2d 684.

Addition to page 24 at conclusion of point I of Jurisdictional Statement

In *Santobello v. New York*, 404 U. S. 257 (1971), this Court reversed a decision of a State court because a prosecutor failed to keep his promise to an accused. In the case at bar the plaintiffs were induced (A. 33) to rely upon an Illinois statute which expressly assured them that their civil service positions which they acquired "*on the basis of merit and fitness*" would "*be continued without fur-*

ther examination" (Ill. Rev. Stat., 1975, ch. 127, pars. 63b108b and 63b117). This was an assurance given to the plaintiffs by the Legislature and the Governor of the State of Illinois, and the plaintiffs relied thereon during their most productive years without choosing more lucrative employment. This assurance certainly deserves enforcement as much as, and logically more than, the assurance involved in *Santobello v. New York*, 404 U. S. 257, cited above.

CONCLUSION

In their motion, the appellees have completely failed to address themselves to the specific problem at hand, where the plaintiffs have been tested and re-tested over and over again and have received numerous and continuous merit promotions, as shown by the following facts which are a matter of public record:

1. Each plaintiff graduated from a medical school recognized and approved by the Illinois Department of Registration and Education (A. 34) as "schools which are reputable and in good standing." (Ill. Rev. Stat. 1975, Ch. 91, par. 14a)
2. Each plaintiff passed an examination in medicine of the government by which he was licensed. (A. 34)
3. Each plaintiff served an internship in an American hospital (A. 33) which hospital was approved by the Illinois Department of Registration and Education. (Ill. Rev. Stat., 1975, Ch. 91, par. 14a)
4. Each plaintiff passed the Illinois Civil Service test for physicians (A. 33-34) which, by virtue of the Illinois Statute (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.1), included the following: "investigation of education; investigation of experience; test of cultural knowledge; test of

capacity; test of knowledge; test of manual skill; test of linguistic ability; test of character; test of physical fitness; test of psychological fitness."

5. Each plaintiff served a probationary period of one year. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.6)

6. Each plaintiff physician acquired "tenure on the basis of merit and fitness." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b)

7. Each plaintiff was evaluated every year by the superintendent of the Illinois State institution in which he served and was found to be able and efficient as a physician.

8. Each plaintiff was promoted (A. 34) based on his "qualifications, record of performance, seniority and conduct." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.2)

9. Each plaintiff received annual salary increases (A. 34) based on "performance records." (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b.14)

10. As to the plaintiffs, all of whom acquired "tenure on the basis of merit and fitness" (Ill. Rev. Stat., 1975, Ch. 127, par. 63b108b), the Illinois statute providing for State civil service expressly provides that after they "have satisfactorily passed their probationary period" and "have been promoted," they "shall be continued without further examination". (Ill. Rev. Stat., 1975, Ch. 127, par. 63b117) (Emphasis supplied.) The plaintiffs were induced by this express statutory provision to remain in the civil service of the State of Illinois and not to pursue more lucrative employment (A. 33).

11. Each plaintiff is at all times subject to discipline and removal for cause by the Illinois Civil Service Commission. (Ill. Rev. Stat., 1975, Ch. 127, par. 63b111)

12. Each plaintiff's competency and ability as a physician has been confirmed by a number of years of experience, as is evident by the fact that no complaint was ever filed against any of the plaintiffs with the Illinois Civil Service Commission.

In this connection, the statement which this Court made in the recent case of *Usery v. Turner Elkhorn Mining Co.*, 49 L.Ed. 2d 752, at page 767, is applicable here:

"It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former."

For the reasons set forth in the Jurisdictional Statement and in this Brief in Opposition to Appellees Motion, the plaintiffs-appellants request that the Motion of the Appellees be denied and that probable jurisdiction be noted.

Respectfully submitted,

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and

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